

FIRST REGULAR SESSION

# SENATE BILL NO. 188

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS DEMPSEY, GRIESHEIMER AND RUPP.

Read 1st time January 13, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 311.332, 311.333, 311.334, 311.335, 311.336, 311.338, and 311.490, RSMo, and to enact in lieu thereof five new sections relating to liquor control, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 311.332, 311.333, 311.334, 311.335, 311.336, 311.338, and 311.490, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 311.332, 311.333, 311.335, 311.338, and 311.490, to read as follows:

311.332. 1. [Except as provided in subsections 2 and 3 of this section,] It shall be unlawful for any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail, to discriminate between retailers or in favor of or against any retailer or group of retailers, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, or to grant directly or indirectly any discount, rebate, free goods, allowance or other inducement, excepting a discount not in excess of one percent for quantity of liquor and wine, and a discount not in excess of one percent for payment on or before a certain date. The delivery of manufacturer rebate coupons by wholesalers to retailers shall not be a violation of this subsection.

2. [Except as provided in subsection 3 of this section, any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 percent by weight to persons duly licensed to sell such intoxicating liquor and  
16 wine at retail may offer a price reduction of not more than four percent of the  
17 wholesaler's price schedule for any brand, age, proof, and size bottle or  
18 package. Such price reduction shall apply for a thirty-day period, shall not be  
19 offered by any wholesaler more than three times in any calendar year, and shall  
20 not be offered during successive months.

21 3. Any wholesaler licensed to sell intoxicating liquor and wine containing  
22 alcohol in excess of five percent by weight to persons duly licensed to sell such  
23 intoxicating liquor and wine at retail may offer a price reduction of more than  
24 four percent of the scheduled price on close-out merchandise. "Close-out  
25 merchandise" is any item which has been in the wholesaler's inventory for more  
26 than six months. The price of close-out merchandise may be decreased, but shall  
27 not be increased, monthly for up to and including twelve consecutive months. A  
28 wholesaler shall not purchase any item of intoxicating liquor or wine of the same  
29 year and vintage the wholesaler has classified as close-out merchandise during  
30 the period of such classification. A wholesaler shall not purchase, sell, or offer  
31 to sell any item of intoxicating liquor or wine of the same year and vintage the  
32 wholesaler has classified as close-out merchandise until twenty-four months have  
33 elapsed since the wholesaler's last offer to sell the item as close-out merchandise.

34 **4.] If any provision of this section or the application thereof to**  
35 **anyone or to any circumstance is held invalid, the remainder of the**  
36 **section and the application of such provisions to others or other**  
37 **circumstances shall not be affected thereby.**

38 3. Manufacturers or wholesalers shall be permitted to donate or deliver  
39 or cause to be delivered beer, wine, brandy, or nonintoxicating beer for nonresale  
40 purposes to any unlicensed person or any licensed retail dealer who is a  
41 charitable or religious organization as defined in section 313.005, RSMo, or  
42 educational institution, at any location or licensed premises, provided, such beer,  
43 wine, brandy, or nonintoxicating beer is unrelated to the organization's or  
44 institution's licensed retail operation. A charge for admission to an event or  
45 activity at which beer, wine, brandy, or nonintoxicating beer is available without  
46 separate charge shall not constitute resale for the purposes of this  
47 subsection. Wine used in religious ceremonies may be sold by wholesalers to a  
48 religious organization as defined in section 313.005, RSMo. Any manufacturer  
49 or wholesaler providing nonresale items shall keep a record of any deliveries  
50 made pursuant to this subsection.

51           [5.] 4. Manufacturers, wholesalers, retailers and unlicensed persons may  
52 donate wine in the original package to a charitable or religious organization as  
53 defined in section 313.005, RSMo, or educational institution for the sole purpose  
54 of being auctioned by the organization or institution for fund-raising purposes,  
55 provided the auction takes place on a retail-licensed premises and all proceeds  
56 from the sale go into a fund of an organization or institution that is unrelated to  
57 any licensed retail operation.

311.333. Any wholesaler licensed under this chapter to sell intoxicating  
2 liquors and wines may accept the return of any intoxicating liquor containing  
3 alcohol in excess of five percent by weight and wines as provided by rules and  
4 regulations promulgated by the supervisor of liquor control, pursuant to chapter  
5 536, RSMo. **Such wholesaler licensed to sell intoxicating liquor or wine**  
6 **containing alcohol in excess of five percent by weight to persons duly**  
7 **licensed to sell such intoxicating liquor and wine at retail shall make**  
8 **available to all such retailers, not later than five days prior to the first**  
9 **day of the month in which the pricing is to be effective, information**  
10 **regarding all products which shall be available for sale in the next**  
11 **month. Such information shall include the brand or trade name,**  
12 **capacity of individual packages, nature of contents, age and proof, the**  
13 **per bottle and per case price which shall be offered to all retailers, the**  
14 **number of bottles contained in each case, and the size thereof. The**  
15 **price provided to retailers under this provision shall become effective**  
16 **on the first date of the next month and remain in effect until the last**  
17 **day of that month. Supplemental pricing information may be provided**  
18 **to retailers by wholesalers for items that were unintentionally left off**  
19 **a regular monthly item information listing or for new items after**  
20 **approval for sale in Missouri by the division of alcohol and tobacco**  
21 **control. A wholesaler shall be allowed to sell such items to retailers**  
22 **immediately upon production of such supplemental information.**

311.335. 1. Any wholesaler licensed to sell intoxicating liquor and wine  
2 containing alcohol in excess of five percent by weight [pursuant to chapter 311]  
3 shall [ship and] deliver **such** intoxicating liquor and wine to a retailer [in the  
4 amount for which the scheduled price set forth on the invoice is in effect] **at the**  
5 **price in effect for that calendar month in which the delivery occurs.**

6           2. Such wholesaler licensed to sell intoxicating liquor and wine containing  
7 alcohol in excess of five percent by weight shall not take an order for delivery in

8 a month subsequent to the month in which the order is taken, provided that [on  
9 and after the date on which amended price schedules are filed with the supervisor  
10 of liquor control] **during the last five business days of each month**, orders  
11 may be taken for delivery in the following month at the price in effect for that  
12 following month and provided, further, that for any order received within the last  
13 [three] **five** business days of a month, the wholesaler may, with the consent of  
14 the retailer placing such order [or upon the request of the retailer placing such  
15 order], deliver such order to the retailer within the first [three] **five** business  
16 days of the month following the month in which the order was received by such  
17 wholesaler at the price in effect for the month in which the order was  
18 placed. Such order received within the last [three] **five** business days of a month  
19 and delivered within the first [three] **five** business days of the subsequent month  
20 shall be known as a "delayed shipment". A delayed shipment shall be deemed  
21 delivered on the last business day of the month in which the order was received  
22 for purposes of implementing and enforcing rules and regulations of the  
23 supervisor of [liquor] **alcohol and tobacco** control relating to invoicing,  
24 discounts and ordinary commercial credit terms.

25 3. Any wholesaler licensed to sell intoxicating [liquor or wine containing  
26 alcohol in excess of five percent by weight violating any provision of this section  
27 shall be subject to, and punished pursuant to, the penalties and provisions of  
28 section 311.680] **liquors and wines containing alcohol in excess of five**  
29 **percent by weight shall be allowed to offer for sale and to sell**  
30 **intoxicating liquors or wines containing alcohol in excess of five**  
31 **percent by weight to persons duly licensed to sell intoxicating liquors**  
32 **and wines at retail at prices which are below the wholesaler's cost for**  
33 **such intoxicating liquors and wines only if such intoxicating liquors**  
34 **and wines in excess of five percent by weight are designated to be**  
35 **close-out merchandise. Wholesalers shall designate intoxicating liquors**  
36 **and wines containing alcohol in excess of five percent by weight to be**  
37 **close-out merchandise by identifying them as close-out items when**  
38 **providing monthly pricing information to retailers as required in**  
39 **section 311.333. A wholesaler shall not purchase any intoxicating**  
40 **liquor or wine containing alcohol in excess of five percent by weight**  
41 **while such intoxicating liquor or wine is designated as close-out**  
42 **merchandise. Intoxicating liquors or wines containing alcohol in**  
43 **excess of five percent by weight that are designated as close-out**

44 merchandise shall be designated as close-out merchandise for not less  
45 than six consecutive months. After not less than six consecutive  
46 months of designation as close-out merchandise, a wholesaler may  
47 remove items from close-out designation by no longer identifying them  
48 as close-out items when providing monthly pricing information to  
49 retailers as required in section 311.333.

311.338. Any person violating any provisions of sections 311.332 [to  
2 311.336], **311.333, and 311.335** shall be deemed guilty of a misdemeanor, and  
3 it shall be the duty of the supervisor of liquor control to suspend or revoke the  
4 license of any wholesaler violating any of the provisions of sections 311.332 [to  
5 311.336], **311.333, and 311.335**.

311.490. No person, partnership or corporation engaged in the brewing,  
2 manufacture or sale of beer as defined, in this chapter, or other intoxicating malt  
3 liquor, shall use in the manufacture or brewing thereof, or shall sell any such  
4 beer or other intoxicating malt liquor which contains ingredients not in  
5 compliance with the following standards:

6 (1) Beer shall be brewed from malt or a malt substitute, which only  
7 includes rice, grain of any kind, bean, glucose, sugar, and molasses. Honey, fruit,  
8 fruit juices, fruit concentrate, herbs, spices, and other food materials may be used  
9 as adjuncts in fermenting beer;

10 (2) Flavor and other nonbeverage ingredients containing alcohol may be  
11 used in producing beer, but may contribute to no more than forty-nine percent of  
12 the overall alcohol content of the finished beer. In the case of beer with an  
13 alcohol content of more than six percent by volume, no more than one and  
14 one-half percent of the volume of the beer may consist of alcohol derived from  
15 added flavors and other nonbeverage ingredients containing alcohol; and

16 (3) Beer, intoxicating malt liquor, and malt beverages, as defined in this  
17 section, shall not be subject to the requirements of [subsections] **subsection 1** [,  
18 2, and 3] of section 311.332 and sections [311.334 to] **311.335 and 311.338**.

[311.334. No intoxicating liquor and wine of any kind shall  
2 be sold by a wholesaler to a retailer duly licensed to sell  
3 intoxicating liquor and wine at retail, or purchased by a wholesaler  
4 for a retailer or by a retailer through a wholesaler, unless a  
5 schedule as provided by this section shall be filed by the wholesaler  
6 with the supervisor of liquor control and is then in effect. The  
7 schedule shall be in writing, duly verified and filed in the number

8 of copies and in such form as required by the supervisor, and shall  
9 contain with respect to each item thereon the exact brand or trade  
10 name, capacity of package, nature of contents, age and proof, the  
11 per bottle and per case price to retailers, the number of bottles  
12 contained in each case, and the size thereof, which prices shall be  
13 individual for each item, and not in "combination" with any other  
14 item or items, the discounts for quantity, if any, and the discounts  
15 for time of payment, if any.]

[311.336. Each such schedule shall be filed on or before the  
2 tenth day of each month, and the prices and discounts therein set  
3 forth shall become effective on the first day of the calendar month  
4 following the filing thereof, and shall be in effect for and during  
5 such calendar month. Within ten days after the filing of such  
6 schedule the supervisor shall make all of such schedules or a  
7 composite thereof available for inspection by all wholesale  
8 licensees. Within three days, excluding Sundays, after such  
9 inspection is provided for, a wholesaler may amend his filed  
10 schedule for sales to a retailer, or purchase for a retailer or by a  
11 retailer through a wholesaler in order to meet lower competing  
12 prices and discounts for liquor or wine of the same brand and trade  
13 name and of like age and quality, filed pursuant to this section or  
14 section 311.334 by any licensee selling such brand; provided,  
15 however, such amended prices may not be lower and discounts not  
16 greater than those to be met. Any amended schedule so filed shall  
17 become effective on the first day of the calendar month following  
18 the filing thereof, and shall be in effect for and during such  
19 calendar month. No brand of liquor or wine shall be sold or  
20 purchased for a retailer by a wholesaler or by a retailer through a  
21 wholesaler except at the price or prices then in effect according to  
22 the wholesaler's filed schedule, and no discount shall be granted  
23 except as set forth in the schedule then in effect. All schedules  
24 filed shall be subject to public inspection from the time that they  
25 are required to be made available for inspection by licensees and  
26 shall not be in any manner considered confidential. Each  
27 wholesaler shall retain in his licensed premises for inspection by  
28 licensees a copy of his filed schedules then in effect. The

29 supervisor of liquor control may make such rules and regulations  
30 as shall be appropriate to carry out the purpose of this section and  
31 sections 311.332 and 311.334.]

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